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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/681,592	10/09/2003	Alex William Ciavola		7172
7590	10/20/2005			
Alex W. Ciavola 2440 E. Hillside Ave. Orange, CA 92867			EXAMINER OKEZIE, ESTHER O	
			ART UNIT 3652	PAPER NUMBER
DATE MAILED: 10/20/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/681,592	Applicant(s) CIAVOLA, ALEX WILLIAM	
	Examiner Esther O. Okezie	Art Unit 3654	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 July 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Response to Amendment

Applicant's arguments with respect to claim 11 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claim 11 is rejected as failing to define the invention in the manner required by 35 U.S.C. 112, second paragraph.

The claim(s) are narrative in form and replete with indefinite and functional or operational language. The structure which goes to make up the device must be clearly and positively specified. The structure must be organized and correlated in such a manner as to present a complete operative device. Note the format of the claims in the patent(s) cited. Language such as "possesses new and different physical characteristics and capability of new functions" should be omitted because this language does not disclose the structure of the device.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Peck et al US 5,400,572. Peck et al discloses a poop scooping and packaging assembly comprising a hoop (10) made of resilient wire, a hand held wand (12), with a handle (11) and a plastic bag (13)

a. Peck et al discloses the hoop has a maximum width of 5 and a 1 half inches (col. 6, lines 33-34) and is made from low cost plastic, which is inherently non-corrosive (col. 5, lines 32-35). Peck et al discloses the claimed invention except for Peck et al does not disclose the weight of the device, and does not disclose a steel ring of nine-gauge steel, ten inches in diameter. It would have been obvious to one of ordinary skill in the art at the time of the invention to choose nine gauge steel, rather than plastic for higher durability and a ten inch diameter ring for picking up larger waste, since these are mere modifications to size and material. Change in size and material is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955) and In re Leshin, 125 USPQ 416.

b. Peck discloses, conventional and commercially available plastic bags with the dimensions of 11½ x 12½ inches. Peck does not disclose plastic bags dimensioned 12x7x14 with a thickness of 1½ mil, and opaque white. It would have been obvious to one of ordinary skill in the art at the time of the invention to choose the bag size and thickness suitable for the device. Change in size is

generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955).

c. whereby the steel ring, when inserted in the plastic bag and the sides of the plastic bag are gathered tightly together and twisted two times, combines with said plastic bag to create a ring bag device (See figures 6-8)

d. wherein said ring bag device, provides a handle on one side formed by the twisted folds of the plastic bag, and on the opposite side of the ring bag device provides a flat surface (See figures 7-9)

e. whereby the dog handler would place the ring bag device, with the flat surface up behind and under the dog when necessary to catch the excreted waste (See figures 7,8)

f. whereby said ring bag device provides the capability of holding the collected waste on a flat surface until tension on the folds of the plastic bag is released, and at which time the weight of the collected animal waste causes the plastic bag and the waste contents to drop through the center of the ring (figures 9 and 10)

g. and whereas said plastic bag, which is now inverted inside out, contains all the animal waste enclosed and collected inside the plastic bag, for disposal at a later time (See figure 11).

Response to Arguments

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Applicant's arguments with respect to claim 11 have been considered but are moot in view of the new ground(s) of rejection as described above.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Esther O. Okezie whose telephone number is (571) 272-8108. The examiner can normally be reached on Mon-Thurs 8-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Katherine A. Matecki can be reached on (571) 272-6951. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

EOO 10/11/05



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